

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

KEVIN TONERO and BIG BLACK  
DOG, INC. d/b/a THE AUTOBERN  
COMPANY, : Hon. Dennis M. Cavanaugh  
Plaintiff : ORDER  
V. : Civil Action No. 10-cv-05499(DMC)(MF)  
Defendants

DENNIS M. CAVANAUGH, U.S.D.J.:

This matter comes before the Court upon motion by Kevin Tonero *et al* ("Plaintiff") for default judgment against Brent Clemens *et al* ("Defendants")

**WHEREAS** Defendants are *pro se* litigants, and therefore the Court construes their pleadings under a "less stringent standard" than formal pleadings prepared by a lawyer." *U.S. v. Albinson* 356 F.3d 278, 284 (C.A.3 (Pa.), 2004) *Mitchell v. Horn*, 318 F.3d 523, 529 (3d Cir. 2003) (citing *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972));

**WHEREAS** it appears that Defendant answered and raised affirmative defenses to Plaintiff's Complaint by letter dated December 3, 2011 (see Dock. 7);

**WHEREAS** it appears that the same answers and defenses remain applicable to the Amended Complaint filed on December 8, 2010 (see Dock. 8), and are reiterated in Defendant's letter subsequent to the Clerk's Entry of Default (see Dock. 10 & 11);

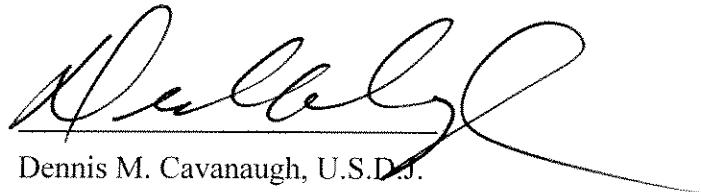
**WHEREAS** the Court finds that in light of Defendant's attempts to answer and defend Default Judgment is not warranted at this time:

**WHEREAS** the Court orders that the Clerk's Entry of Default be vacated;

**WHEREAS** the Court orders that the parties contact the Honorable Mark Falk, U.S.M.J., to arrange an initial scheduling conference pursuant to Fed. R. Civ. P. 16 as soon as possible;

IT IS on this 8 day of August, 2011;

**ORDERED** that the Entry of Default is **vacated** and the parties are instructed to contact Judge Falk for further proceedings.



Dennis M. Cavanaugh, U.S.D.J.

Orig.: Clerk  
cc: All Counsel of Record  
Hon. Mark Falk, U.S.M.J.  
File